

IN RE: ) In Proceedings  
 ) Under Chapter 7  
STEVEN LEE COUSINS, )  
 ) BK 89-50098  
Debtor(s). )

At the hearing of this matter on April 13, 1989, only the debtor was present through counsel. Counsel declined to present evidence of the amount of the claims. Rather, counsel informed the Court that debtor knew only that the Reis claim is in excess of \$15,000.00 because this amount is necessary to confer jurisdiction

in the circuit division of the state court where the matter is pending.

Notably, debtor's schedules reveal that he has no assets from which to pay creditors a dividend. Additionally, no complaints under 11 U.S.C. sections 523 or 727 have been filed against debtor to date.

Section 502(c) of the Bankruptcy Code, 11 U.S.C. 502(c), provides in pertinent part:

(c) There shall be estimated for purpose of allowance under this section -

(1) any contingent or unliquidated claim, the fixing or liquidation of which, as the case may be, would unduly delay the administration of the case[.]

Under section 502(c), the Court must estimate any contingent or unliquidated claim when the failure to do so would hinder the progress of the bankruptcy proceeding. E.g., A.H. Robins Co., Inc. v. Piccinin, 788 F.2d 994, 1011-12 (4th Cir.), cert. denied, 479 U.S. 876 (1986); Matter of Poole Funeral Chapel, Inc., 79 B.R. 37, 39 (Bankr. N.D. Ala. 1987).

However, because debtor is requesting the estimation of personal injury tort claims, section 502(c) must be read in conjunction with certain provisions of the Bankruptcy Amendments and Federal Judgeship Act of 1984 [hereafter, Act] which limit the jurisdiction of the bankruptcy court where unliquidated personal injury, tort or wrongful death claims are involved. Section 157(b)(2)(B) of the Act expressly excludes from the definition of core proceedings "the liquidation or estimation of contingent or unliquidated personal injury tort or wrongful death claims...for purposes of distribution in a case under title 11." 28 U.S.C. 157(b)(2)(B) (emphasis added). See also 28

U.S.C. 157(b)(2)(0). Such claims are to be tried by the district court pursuant to 28 U.S.C. section 157(b)(5). E.g., 5 Collier on Bankruptcy ¶1300.71, at 1300-135 (15th ed. 1988).

Thus, the Court lacks authority under the Act to enter a final order estimating the claims which debtor has brought to its attention.<sup>1</sup> Although the Court may estimate claims of this nature for purposes of determining the feasibility of a reorganization, e.g., A. H. Robins Co., Inc. v. Piccinin, 788 F.2d at 1012; In re Johns-Manville Corp., 45 B.R. 823, 826 (S.D.N.Y. 1984); In re UNR Industries, Inc., 45 B.R. 322, 324 (N.D. Ill. 1984), debtor's purpose in seeking estimation in the instant Chapter 7 case - while remaining unclear to the Court presumably relates to the functions of discharge and distribution. Accordingly, the estimation of these claims is a noncore proceeding outside the jurisdiction of the Court. See, e.g., 1 Collier on Bankruptcy, supra, ¶3.01, at 3-76 to 3-77.

Moreover, the Court finds that estimation of the claims is not necessary because the claims need not be liquidated in order to administer the case without delay.<sup>2</sup> There are no assets available from which these claimants could be paid a dividend. No challenges to discharge of the debtor or to dischargeability of the claims have been

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<sup>1</sup>The Court need not here decide if estimation of these claims may be referred by the district court for proposed findings and recommendations pursuant to 28 U.S.C. 157(c)(1) because its decision to refrain from estimating the claims is based on other grounds as stated below.

<sup>2</sup>Since debtor presented no evidence on the amount of the claims, the Court would have been unable to estimate the claims if it had been necessary to do so.

raised under 11 U.S.C. sections 727 or 523 respectively. Nor is there any evidence before the Court to indicate that such challenges may occur. Since debtor has properly scheduled the claims against him, the claims - although contingent, unliquidated and disputed - will be discharged as the case proceeds at its usual pace. E.g., 1 R. Ginsberg, Bankruptcy ¶10,101, at 10,011 to 10,012 (1986).

IT IS ORDERED that debtor's motion to estimate claims is DENIED.

/s/ Kenneth J. Meyers  
U.S. BANKRUPTCY JUDGE

ENTERED: June 2, 1989